

05 May 2023

Final report by the Complaints Commissioner

Complaint number 202201737

The complaint

1. You originally wrote to my office on 14 November 2022 as you were not satisfied with the FCA's decision letter dated 10 November 2022 (this was a revised decision letter with an initial decision letter issued to you on 6 October 2022). I asked the FCA some preliminary questions to clarify aspects of that decision letter that I felt were not clear. The FCA then requested the opportunity to re-issue the decision letter. The revised letter was issued on 20 January 2023 and you again wrote to me on 24 February 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA set out in its decision letter dated 20 January 2023 that your complaint was as follows:

You are unhappy that the FCA are not making Investment Platforms adhere to Principle 6 of TCF, where firms must pay due regard to the interests of its customers and treat them fairly.

Some investment platforms retain the interest generated by their customers cash holdings. You believe this is an unfair way for platforms to make a profit.

You are wanting the FCA to investigate whether a potential conflict of interest exists between banks and investment platforms to the detriment of consumers. You believe there is no value in TCF principles if the FCA refuse to hold regulated firms to account.

What the regulator decided

3. In its decision letter the FCA set out that it had noted the points you made on Treating Customers Fairly (TCF) Principle 6, including the level of interest paid on cash held by investment platforms and the potential conflict that exists between banks and investment platforms.
4. The FCA also set out that it carries out a range of work with firms to assess whether they are meeting the FCA principles. It set out that the FCA also gather and act on intelligence about firms via a range of sources, including from consumers like yourself. This intelligence is carefully considered and where it is identified that firms are not adhering to our principles, the FCA will hold them to account.
5. Further, the FCA are also using the new Consumer Duty to help consumers receive fair value and good treatment.
6. The FCA confirmed that the information you provided regarding Firm X was passed on to the relevant supervision team previously when you provided it. However, the FCA are unable to provide feedback about information it receives from consumers because the FCA's supervisory work is confidential. Section 348 of the Financial Services and Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and places restrictions on how that information is dealt with. As such, the FCA will not provide feedback on what action has been taken (or not taken) in respect of the information it has received. Further information can be found on our website here.
7. In summary to its decision letter the FCA set out that having considered that the FCA are not making any error in this instance, relevant processes are being followed and with regret, are restricted on what we can disclose to you, I am unable to uphold your complaint.

Why you are unhappy with the regulator's decision

8. You wrote to me on 24 February 2023 and asked me to review the outcome of the FCA decision letter setting out the 'patently the FCA are failing to enforce TCF principle six.'

Preliminary points (if any)

9. As set out in its decision letter the FCA is subject to confidentiality restrictions under Section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedominformation/information-we-can-share>
10. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that having studied the confidential material, and whether I am satisfied (or not) that the FCA has behaved reasonably.

My analysis

11. In reviewing your complaint, I have had access to the FCA's investigation file into your complaint and have been able to consider the information that was used to investigate your complaint and reach the decision set out in the FCA's decision letter to you dated 20 January 2023.
12. Having reviewed the information provided to me by the FCA I am satisfied that the complaint team's actions were appropriate, contacting the relevant teams setting out the issues you had raised and obtaining relevant information from them in order to address these matters in the decision letter to you. I am also satisfied that the information you provided in relation to Firm X was passed on and received by the relevant supervision team at the time you provided it. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you, but I hope you will be reassured that I have reached this conclusion after independently reviewing the confidential material.

13. In your complaint email to me you set out that 'patently the FCA are failing to enforce TCF principle six'. I do not consider that this is evident from my review of the information provided to me and I consider that the FCA acted appropriately with the information you provided to it. On this basis I do not uphold this element of your complaint.
14. Finally, I note that in your email to the FCA dated 23 September 2022 you pointed out that the New Consumer Duty is set to bring in provisions for Firms to end rip-off charges and fees and also to make it as easy for consumers to switch or cancel products. The FCA set out in its decision letter that the FCA it is using the new Consumer Duty to help consumers receive fair value and good treatment. I positively await the commencement of the New Consumer Duty and hope that it will provide further protection to consumers than under the existing provisions and will enable the FCA to pursue all firms that fail to meet their duties after its implementation.

My decision

15. I have **not upheld** your complaint for the reasons set out above. This is my final report about your complaint.

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Complaints Commissioner

05 May 2023